UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ST. PAUL SURPLUS LINES INSURANCE COMPANY,	§	
Plaintiff,	§	
	§	
V.	§	
	§	**C.A. NO. 11-403**
DAVIS GULF COAST, INC., and DAVIS OPERATING COMPANY	§	
Defendants.	§	

ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

NOW COMES St. Paul Surplus Lines Insurance Company, the Plaintiff herein, and pursuant to the United States Declaratory Judgment Act, the Texas Declaratory Judgment Act, and all other applicable law, files this its Original Complaint, and in support thereof, would respectfully show as follows:

I.
PARTIES

1.1 St. Paul Surplus Lines Insurance Company ("St. Paul") is a Delaware corporation, with its principal place of business located in Hartford, Connecticut.

1.2 Davis Gulf Coast, Inc. ("Davis Gulf Coast") is an Oklahoma corporation, with its principal place of business located in Tulsa, Oklahoma.

1.3 Davis Operating Company ("Davis Operating") is an Oklahoma corporation, with its principal place of business located in Tulsa, Oklahoma.

II.
SERVICE

2.1 Davis Gulf Coast may be served with Plaintiff's Original Complaint by serving its registered agent for service of process in Texas: Gary W. Meadows, One Riverway, Suite 2020, Houston, Texas 77056.

2.2 Davis Operating may be served with Plaintiff's Original Complaint by serving its registered agent for service of process in Texas: 621 N. 6th Street, Canadian, Texas 79014.

III.
SUBJECT MATTER JURISDICTION

3.1 Subject matter jurisdiction is proper in this Court pursuant to this Court's diversity jurisdiction under 28 U.S.C. § 1332 and under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.* This controversy exceeds, exclusive of interest and costs, the sum of $75,000. This action is also brought pursuant to the Texas Declaratory Judgment Act, TEX. CIV. PRAC. & REM. CODE § 37.001, *et seq.*

IV.
PERSONAL JURISDICTION

4.1 This Court has personal jurisdiction over Davis Gulf Coast and Davis Operating because these corporations are doing business in Texas.

V.
VENUE

5.1 Venue of this action is proper in this Court pursuant to 28 U.S.C. § 1391, because a substantial part of the events giving rise to this lawsuit occurred in this district, and because the defendants are subject to personal jurisdiction in this district.

VI.
FACTS

6.1 A pipe leak allegedly caused a spill of crude oil at the "Wynne" lease site on Matagorda Island, Texas. On information and belief, Davis Gulf Coast and Davis Operating became aware of this spill on or before February 16, 2010.

6.2 The spill involved an unknown number of barrels of crude oil that leaked into U.S. government-owned lands - the Aransas National Wildlife Refuge.

6.3 The spill site was inspected by the Environmental Protection Agency and the U.S. Wildlife Manager, along with Davis Gulf Coast Representatives on March 4, 2010. At that time, numerous deficiencies were documented, including leaks at the bases of two tank batteries and failure to report spills to the Refuse and National Response Center.

6.4 Invoices pertaining to the remediation of the spill are dated as early as February 15, 2010.

6.5 Davis Gulf Coast first reported the spill and the associated clean-up costs to its agent, Fred Daniel & Sons, Inc., by a letter dated September 22, 2010. On or about September 30, 2010, the agent reported the claim for the spill clean-up costs to St. Paul.

VII.
THERE IS NO COVERAGE FOR THE POLLUTION CLEAN-UP COSTS UNDER THE ST. PAUL POLICY

7.1 St. Paul issued Oil & Gas Commercial General Liability Policy No. MU05540547 to Davis Operating for the policy period of August 1, 2009 to August 1, 2010 (the "St. Paul Policy"). Davis Gulf Coast is an additional named insured on the St. Paul Policy.

7.2 By a letter dated October 26, 2010, St. Paul notified Davis Gulf Coast that, pursuant to certain policy provisions, terms, and, exclusions contained in the St. Paul Policy, no coverage exists for the spill clean-up costs. St. Paul has relied on the entire contents of the St. Paul Policy in informing Davis Gulf Coast of the lack of insurance coverage for its pollution clean-up costs, including the following terms of the St. Paul Policy.

7.3 The St. Paul Policy contains pollution clean-up cost coverage on the Oil & Gas Commercial General Liability Protection Form OG001, which provides, in relevant part, as follows:

> ***What this Agreement Covers***
>
> ….
>
> ***Pollution clean-up costs.*** *We'll pay amounts you voluntarily incur, or you're legally required to pay, for covered pollution clean-up costs that result from a* ***sudden and accidental pollution incident*** *which:*

- *Begins while this agreement is in effect;*
- *Results from your work or your completed work in the performance of your oil or gas operations, other than such work or completed work that is or was performed at, on, in, or from a waste site; and*
- *Doesn't result from any intentional and willful violation of any governmental law, regulation, or rule by you or anyone acting on your behalf.*

7.4 The Oil & Gas Commercial General Liability Protection Form OG001 also contains a definition of ***sudden and accidental pollution incident*** which reads as follows:

> *Sudden and accidental pollution incident means the discharge, dispersal, escape, or release of a pollutant that:*

- *Is sudden and accidental;*
- *Begins on a specific date and at a specific time while the agreement is in effect;*

- *Is first known within 30 days of its beginning by you or any of your employees, your operating agent or any of its employees, or your pumper-gauger or any of its employees;*

- *Any protected person, your operating agent, or your pumper-gauger attempts to end as soon as possible after it first becomes known by you or any of your employees, your operating agent or any of its employees, or your pumper-gauger or any of its employees; and*

- ***Is reported to us with 90 days after it first becomes known to you or any of your employees, your operating agent or any of its employees, or your pumper-gauger or any of its employees.***

7.5 Davis Gulf Coast and Davis Operating seek coverage under the St. Paul Policy for its costs in cleaning up the oil spilled on Matagorda Island. However, the St. Paul Policy only covers pollution clean-up costs that result from a "sudden and accidental pollution incident" in which all five requirements outlined in the Endorsement are satisfied. The oil spill on Matagorda Island cannot qualify as a "sudden and accidental pollution incident" under the Endorsement because the spill was not reported within the 90 day notice reporting period after it became known to Davis Gulf Coast. As set forth above, the spill was first known to Davis Gulf Coast on or before February 16, 2010. However, Davis Gulf Coast did not report the spill to St. Paul until September 30, 2010, several months after the expiration of the reporting period. Because the requirements for coverage are not met, the clean-up costs incurred by Davis Gulf Coast and Davis Operating for the oil spill at issue are not covered by the St. Paul Policy.

VIII.
CAUSES OF ACTION AND CLAIMS

8.1 An actual controversy has arisen and now exists between the parties relating to the duty of St. Paul to indemnify Davis Gulf Coast and Davis Operating for the pollution clean-up costs pursuant to the St. Paul Policy for the reasons noted herein. Declaratory judgment is, therefore, necessary, and St. Paul asks for a declaration of its rights under the St. Paul Policy.

8.2 St. Paul has retained Royston, Rayzor, Vickery & Williams, L.L.P. to represent it in this action, and St. Paul has agreed to pay this firm its necessary and reasonable attorneys' fees and expenses. An award of these necessary and reasonable attorneys' fees and expenses incurred by St. Paul would be equitable and just, and St. Paul therefore seeks recovery of them pursuant to the Federal Declaratory Judgment Act, the Texas Declaratory Judgment Act, and all other applicable provisions of Federal and Texas law.

IX.
PRAYER

WHEREFORE, PREMISES CONSIDERED, St. Paul Surplus Lines Insurance Company respectfully prays that Davis Gulf Coast and Davis Operating be cited to appear, and that St. Paul be awarded a judgment against Defendant as follows:

1. This Honorable Court declare that St. Paul has no duty to indemnify Davis Gulf Coast and Davis Operating for any costs it incurred in remediating the spill of crude oil on Matagorda Island under the St. Paul Policy;

2. This Honorable Court find that St. Paul be awarded its reasonable and necessary attorneys' fees and expenses incurred in filing and pursuing this lawsuit;

3. This Honorable Court find that St. Paul be awarded its court costs in this action; and

4. This Honorable Court find that St. Paul be awarded such other and further relief to which it may show itself justly entitled.

Respectfully submitted,

By: */s/ Marcus R. Tucker*

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